

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

(As read a first time)

HEALTH LEGISLATION AMENDMENT BILL (No. 2) 1982

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1982

1980-81-82

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

Presented and read a first time, 14 October 1982

(Minister for Health)

A BILL

FOR

An Act to amend the *Health Insurance Act 1973*, the *National Health Act 1953* and the *Health Insurance Commission Act 1973*, and for related purposes

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

PART I—PRELIMINARY

Short title

- 5 **1.** This Act may be cited as the *Health Legislation Amendment Act (No. 2) 1982*.

Commencement

- 10 **2. (1)** Subject to this section, this Act shall come into operation on the day on which it receives the Royal Assent.
- (2)** Sub-sections 4 (1) and (4) and 14 (2) and (4) shall come into operation or shall be deemed to have come into operation, as the case requires, on 1 November 1982.

(3) Sub-sections 4 (2) and 5 (1), sections 7 and 9, sub-section 25 (1), sections 26 and 27, sub-section 30 (2), section 32, sub-section 33 (2) and section 41 shall come into operation on 1 January 1983.

(4) Sub-sections 4 (3), 5 (2), 14 (3) and 25 (2) shall come into operation on 1 March 1983. 5

(5) Sub-section 6 (2) shall come into operation on 1 April 1983.

(6) Sub-section 6 (3) shall come into operation on 1 May 1983.

(7) Section 8 shall come into operation, or shall be deemed to have come into operation, as the case requires, on the day on which section 8 of the *Health Legislation Amendment Act 1982* comes, or came, into operation. 10

(8) The amendment made by sub-section 14 (1) shall be deemed to have taken effect on 1 October 1977.

PART II—AMENDMENTS OF THE HEALTH INSURANCE ACT 1973

Principal Act 15

3. The *Health Insurance Act 1973*¹ is in this Part referred to as the Principal Act.

Interpretation

4. (1) Section 3 of the Principal Act is amended—

(a) by omitting “, a sheltered employment allowance or a sickness benefit” from sub-paragraph (a) (i) of the definition of “eligible pensioner” in sub-section (1) and substituting “or a sheltered employment allowance”; 20

(b) by inserting after paragraph (a) of the definition of “eligible pensioner” in sub-section (1) the following paragraph: 25

“(aa) a person to whom or in respect of whom—

(i) there is being paid a sickness benefit under the *Social Security Act 1947*; or

(ii) such a benefit would be payable if the person were not a person in receipt of a training allowance under section 135D of the *Social Security Act 1947*;” 30

(c) by inserting after sub-section (6) the following sub-sections:

“(7) Notwithstanding anything in the definition of ‘dependant’ in sub-section (1), a person to whom or in respect of whom—

(a) a supporting parent’s benefit under the *Social Security Act 1947* is being paid; or 35

(b) such a benefit would be payable if the person were not a person in receipt of a training allowance under section 135D of the *Social Security Act 1947*,

shall not be taken to be a dependant of another person who is an eligible pensioner unless—

(c) that benefit was granted pursuant to a claim lodged before the prescribed date; and

(d) the pension that is being paid to or in respect of the other person, or that would, if the other person were not a person in receipt of a training allowance under section 135D of the *Social Security Act 1947*, be payable to or in respect of the other person, was granted pursuant to a claim lodged before the prescribed date.

“(8) In sub-section (7), ‘prescribed date’ means 1 November 1982, or if the day on which the *Social Security Legislation Amendment Act 1982* receives the Royal Assent is a later day than 1 November 1982, that later day.”; and

(d) by omitting from sub-section (10) “sub-section (9)” and substituting “sub-sections (7) and (9)”.

(2) Section 3 of the Principal Act is amended—

(a) by inserting after paragraph (a) of the definition of “dependant” in sub-section (1) the following paragraph:

“(aa) in relation to a person who is a disadvantaged person by virtue of section 4C—

(i) the wife of the person;

(ii) a child under the age of 16 years who is in the custody, care and control of the person or of the wife or husband of the person; or

(iii) a person who—

(A) has attained the age of 16 years but is under the age of 25 years;

(B) is receiving full-time education at a school, college or university;

(C) is not in receipt of an invalid pension under Part III of the *Social Security Act 1947*; and

(D) is wholly or substantially dependent on the person or on the wife or husband of the person;”;

(b) by omitting from sub-section (7) all the words after “eligible pensioner” and substituting the following words and paragraphs:

“or who is a disadvantaged person by virtue of section 4C unless that benefit was granted pursuant to a claim lodged before the prescribed date and—

(c) in a case where the other person is an eligible pensioner—the pension that is being paid to or in respect of the other person, or that would, if that other person were not a person in receipt of a training

allowance under section 135D of the *Social Security Act 1947*, be payable to or in respect of the other person, was granted pursuant to a claim lodged before the prescribed date; or

(d) in a case where the other person is a disadvantaged person by virtue of section 4C— 5

(i) if paragraph 4C (1) (a) applied to the person immediately before the day on which the person became such a disadvantaged person—the pension that was being paid to or in respect of the person was granted pursuant to a claim lodged before the prescribed date; or 10

(ii) if paragraph 4C (1) (b) applied to the person immediately before the day on which the person became such a disadvantaged person—the pension that would, if the person were not a person to whom paragraph 4C (1) (b) applied, have been payable to or in respect of the person, was granted pursuant to a claim lodged before the prescribed date”; 15 20

(c) by inserting after sub-section (10) the following sub-section:

“(10A) In paragraph (aa) of the definition of ‘dependant’ in sub-section (1), a reference to the wife or husband of a person includes a reference to a person who, although not legally married to the first-mentioned person, is living with the first-mentioned person as the wife or husband of the first-mentioned person on a *bona fide* domestic basis.”; and 25

(d) by inserting in sub-section (13) “or is a disadvantaged person by virtue of section 4C in respect of a period,” after “period,” (first occurring).

(3) Section 3 of the Principal Act is amended— 30

(a) by omitting sub-sub-paragraph (a) (iii) (C) of the definition of “dependant” in sub-section (1) and substituting the following sub-sub-paragraph:

“(C) is not being paid an invalid pension under Part III of the *Social Security Act 1947* or, in a case where the person is being paid a rehabilitation allowance under that Act, was not eligible to receive such a pension immediately before the person became eligible to receive that allowance; and”; 35

(b) by omitting sub-sub-paragraph (aa) (iii) (C) of the definition of “dependant” in sub-section (1) and substituting the following sub-sub-paragraph: 40

“(C) is not being paid an invalid pension under Part III of the *Social Security Act 1947* or, in a case where the person is being paid a rehabilitation allowance under that Act, was not

eligible to receive such a pension immediately before the person became eligible to receive that allowance; and”;

- (c) by omitting paragraphs (a) and (aa) of the definition of “eligible pensioner” in sub-section (1) and substituting the following paragraphs:

“(a) a person to whom or in respect of whom there is being paid an age pension, an invalid pension, a widow’s pension, a supporting parent’s benefit, a sheltered employment allowance or a rehabilitation allowance under the *Social Security Act 1947* other than such a person who is a person to whom paragraph (aa) applies or who is a prescribed person within the meaning of section 83CA of the *Social Security Act 1947*;

“(aa) a person—

- (i) to whom or in respect of whom there is being paid a sickness benefit under the *Social Security Act 1947*; or
- (ii) who is in receipt of a rehabilitation allowance under the *Social Security Act 1947* and was, immediately before the person became eligible to receive that allowance, eligible to receive such a sickness benefit;”;

- (d) by omitting from sub-section (7) the following words and paragraphs:

“a person to whom or in respect of whom—

- (a) a supporting parent’s benefit under the *Social Security Act 1947* is being paid; or
- (b) such a benefit would be payable if the person were not a person in receipt of a training allowance under section 135D of the *Social Security Act 1947*,”

and substituting the following words and paragraphs:

“a person—

- (a) to whom or in respect of whom a supporting parent’s benefit under the *Social Security Act 1947* is being paid; or
- (b) who is in receipt of a rehabilitation allowance under that Act and was, immediately before the person became eligible to receive that allowance, eligible to receive such a benefit;”;

- (e) by omitting paragraph (7) (c) and substituting the following paragraph:

“(c) in a case where the other person is an eligible pensioner—

- (i) unless sub-paragraph (ii) applies—the pension that is being paid to or in respect of the other person was granted pursuant to a claim lodged before the prescribed date; or
- (ii) if the pension that is being paid to or in respect of the other person is a rehabilitation allowance under the

Social Security Act 1947 and, immediately before the person became eligible to receive that allowance, the person was eligible to receive another pension—that other pension was granted pursuant to a claim lodged before the prescribed date; or”;

- (f) by omitting from sub-section (9) all the words after “pensioner,” (third occurring); and
- (g) by omitting from paragraph (10) (a) “or a sickness benefit” and substituting “, a sickness benefit or a rehabilitation allowance”.

(4) The amendments made by sub-section (1) apply in relation to a person, and to a person who is a dependant of the first-mentioned person, on and after 1 November 1982, if that day is a day on which an instalment of sickness benefit or training allowance under the *Social Security Act 1947* in respect of the first-mentioned person falls due, or if it is not, on and after the first day on which an instalment of such sickness benefit or training allowance falls due after 1 November 1982.

5. (1) After section 4B of the Principal Act the following section is inserted:

Disadvantaged persons, being certain former recipients of invalid pension and sheltered employment allowance

- “4C. (1) This section applies to a person to whom or in respect of whom—
- (a) there is being paid an invalid pension or sheltered employment allowance under the *Social Security Act 1947*; or
 - (b) such a pension or allowance would be payable if the person were not a person in receipt of a training allowance under section 135D of the *Social Security Act 1947*.

“(2) Where a person to whom this section applies—

- (a) undertakes paid employment (other than sheltered employment within the meaning of Part VIIA of the *Social Security Act 1947*); and
- (b) by reason only of an increase in the income (if any) of the person, being an increase attributable to his undertaking that employment—
 - (i) in the case of a person to whom paragraph (1) (a) applies—ceases to be a person to whom that paragraph applies; or
 - (ii) in the case of a person to whom paragraph (1) (b) applies—would, if he had been a person to whom paragraph (1) (a) had applied, have ceased to be a person to whom paragraph (1) (a) applied,

the person shall be a disadvantaged person in respect of the period of 12 months commencing on the day on which he ceases to be a person to whom paragraph (1) (a) applies or the day on which he would have ceased to be a person to whom paragraph (1) (a) applied, as the case requires.”.

(2) Section 4C of the Principal Act is amended by omitting from paragraph (1) (b) “training allowance under section 135D of” and substituting “rehabilitation allowance under”.

Disadvantaged persons, being persons on low incomes

5 6. (1) Section 5B of the Principal act is amended by omitting sub-paragraph (a) (i) of the definition of “allowable income” in sub-section (12) and substituting the following sub-paragraph:

10 “(i) the amount of the weekly rate of income that would, as at the last day of that period, be sufficient, but no more than sufficient, to prevent a married person with no children from receiving any unemployment benefit;”.

(2) Section 5B of the Principal Act is amended by omitting “or funeral benefit” from paragraph (a) of the definition of “income” in sub-section (12) and substituting “, funeral benefit or mobility allowance”.

15 (3) Section 5B of the Principal Act is amended by omitting “or mobility allowance” from paragraph (a) of the definition of “income” in sub-section (12) and substituting “, mobility allowance or family income supplement”.

Declarations of person to be disadvantaged person not to overlap

20 7. Section 5G of the Principal Act is amended by adding at the end thereof “or by virtue of section 4C”.

Offences in relation to disqualifications under section 19B

8. Section 19D of the Principal Act is amended by omitting from sub-section (1) “specified services” and substituting “professional services”.

Information with respect to disadvantaged persons

25 9. Section 130H of the Principal Act is amended by omitting “5” and substituting “4C”.

Delegation by Director-General of Social Security

10. Section 130J of the Principal Act is amended by omitting “Social Services” (wherever occurring) and substituting “Social Security”.

30 **Evidence**

11. Section 132 of the Principal Act is amended—

(a) by omitting from sub-section (1) all the words after “specified” and substituting “in the certificate, any premises were, or were not, a hospital”; and

35 (b) by inserting after sub-section (1) the following sub-section:

“(1A) The Minister may, by writing under his hand, certify—

(a) that a document annexed to the certificate is a true copy of a determination or direction by the Minister under this Act or of any other document made or issued under this Act; or

(b) that—

- (i) a document annexed to the certificate is a true copy of a determination or direction by the Minister under this Act or of any other document made or issued under this Act; and
- (ii) the determination, direction or other document of which the annexed document is certified to be a true copy had effect during a period or on a date specified in the certificate.”.

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Amendments consequential upon the enactment of the *Social Services Legislation Amendment Act 1982*

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12. The Principal Act is amended as set out in Schedule 1.

PART III—AMENDMENTS OF THE NATIONAL HEALTH ACT 1953

Principal Act

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13. The *National Health Act 1953*² is in this Part referred to as the Principal Act.

Interpretation

14. (1) Section 4 of the Principal Act is amended by omitting from sub-section (5) “sub-section (6) of section forty AA of this Act” and substituting “sub-sections 40AA (5A) and (6)”.

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(2) Section 4 of the Principal Act is amended—

(a) by omitting “, a sheltered employment allowance or a sickness benefit” from sub-paragraph (a) (i) of the definition of “pensioner” in sub-section (1) and substituting “or a sheltered employment allowance”;

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(b) by inserting after paragraph (a) of the definition of “pensioner” in sub-section (1) the following paragraph:

“(aa) a person to whom or in respect of whom—

(i) there is being paid a sickness benefit under the *Social Security Act 1947*; or

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(ii) such a benefit would be payable if the person were not a person in receipt of a training allowance under section 135D of the *Social Security Act 1947*.”;

(c) by inserting after sub-section (1C) the following sub-sections:

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“(1D) Notwithstanding anything in the definition of ‘dependant’ (in relation to a pensioner) in sub-section (1), a person to whom or in respect of whom—

(a) a supporting parent’s benefit under the *Social Security Act 1947* is being paid; or

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- (b) such a benefit would be payable if the person were not a person in receipt of a training allowance under section 135D of the *Social Security Act 1947*,

shall not be taken to be a dependant of another person unless—

- 5 (c) that benefit was granted pursuant to a claim lodged before the prescribed date; and
- 10 (d) the pension that is being paid to or in respect of the other person, or that would, if the other person were not a person in receipt of a training allowance is under section 135D of the *Social Security Act 1947*, be payable to or in respect of that other person, was granted pursuant to a claim lodged before the prescribed date.

15 “(1E) In sub-section (1D), ‘prescribed date’ means 1 November 1982, or if the day on which the *Social Security Legislation Amendment Act 1982* receives the Royal Assent is a later day than 1 November 1982, that later day.”; and

- (d) by omitting from sub-section (3) “sub-section (2)” and substituting “sub-sections (1D) and (2)”.

(3) Section 4 of the Principal Act is amended—

- 20 (a) by omitting sub-paragraph (c) (iii) of the definition of “dependant” (in relation to a pensioner) in sub-section (1) and substituting the following sub-paragraph:

25 “(iii) is not being paid an invalid pension under Part III of the *Social Security Act 1947* or, in a case where the person is being paid a rehabilitation allowance under that Act, was not eligible to receive such a pension immediately before the person became eligible to receive that allowance; and”;

- (b) by omitting paragraphs (a) and (aa) of the definition of “pensioner” in sub-section (1) and substituting the following paragraphs:

30 “(a) a person to whom or in respect of whom there is being paid an age pension, an invalid pension, a widow’s pension, a supporting parent’s benefit, a sheltered employment allowance or a rehabilitation allowance under the *Social Security Act 1947* other than such a person who is a person to whom paragraph (aa) applies or who is a prescribed person within the meaning of section 83CA of the *Social Security Act 1947*;

35 “(aa) a person—

- 40 (i) to whom or in respect of whom there is being paid a sickness benefit under the *Social Security Act 1947*; or
- (ii) who is in receipt of a rehabilitation allowance under the *Social Security Act 1947* and was, immediately before the person became eligible to receive that allowance, eligible to receive such a sickness benefit;”;

(c) by omitting sub-section (1D) and substituting the following sub-section:

“(1D) Notwithstanding anything in the definition of ‘dependant’ (in relation to a pensioner) in sub-section (1), a person—

(a) to whom or in respect of whom a supporting parent’s benefit under the *Social Security Act 1947* is being paid; or

(b) who is in receipt of a rehabilitation allowance under that Act and was, immediately before the person became eligible to receive that allowance, eligible to receive such a benefit,

shall not be taken to be a dependant of another person unless that benefit was granted pursuant to a claim lodged before the prescribed date and—

(c) unless paragraph (d) applies—the pension that is being paid to or in respect of the other person was granted pursuant to a claim lodged before the prescribed date; or

(d) if the pension that is being paid to or in respect of the other person is a rehabilitation allowance under the *Social Security Act 1947* and, immediately before the person became eligible to receive that allowance, the person was eligible to receive another pension—that other pension was granted pursuant to a claim lodged before the prescribed date.”;

(d) by omitting from sub-section (2) all the words after “pensioner,” (fourth occurring); and

(e) by omitting from paragraph (3) (a) “or a sickness benefit” and substituting “, a sickness benefit or a rehabilitation allowance”.

(4) The amendments made by sub-section (2) apply in relation to a person, and to a person who is a dependant of the first-mentioned person, on and after 1 November 1982, if that day is a day on which an instalment of sickness benefit or training allowance under the *Social Security Act 1947* in respect of the first-mentioned person falls due, or if it is not, on and after the first day on which an instalment of such sickness benefit or training allowance falls due after 1 November 1982.

Circumstances in which payment not to be made

15. Section 20 of the Principal Act is amended by inserting after sub-section (3) the following sub-section:

“(3A) The Permanent Head shall, by writing signed by him, notify to an applicant under section 13 his decision under sub-section (3) of this section in relation to the application.”.

Revocation, &c., of conditions imposed by Minister

16. Section 73B of the Principal Act is amended by inserting after sub-section (1) the following sub-section:

“(1A) Where the Minister makes a decision revoking, varying or imposing a condition under sub-section (1) in relation to an organization, he shall cause

notice in writing of that decision to be served, either personally or by post, on the public officer of the organization.”.

Directions by the Minister to registered organizations

5 17. (1) Section 73BE of the Principal Act is amended by omitting sub-sections (5), (6), (7), (7A) and (8).

10 (2) Where, in pursuance of sub-section 73BE (5) of the Principal Act, the Minister has caused a copy of a direction to be laid before a House of the Parliament, then, notwithstanding the amendment made by sub-section (1) of this section, section 73BE of the Principal Act continues to apply in relation to that direction as if that amendment had not been made.

Minister may give directions to registered organizations concerning management practices

15 18. Section 73BEA of the Principal Act is amended by inserting after sub-section (4) the following sub-section:

“(4A) In the exercise of his powers to give a registered organization a direction under this section, the Minister shall have regard to all matters that he considers relevant, including, in particular, but without limiting the generality of the foregoing, the interests of the contributors to a fund conducted by the organization.”.

20 19. After section 73BEA of the Principal Act the following section is inserted:

Directions subject to Parliamentary disallowance

25 “73BEB. (1) The Minister shall cause a copy of each direction referred to in sub-section 73BE (3) or given under section 73BEA to be laid before each House of the Parliament within 15 sitting days of that House after the direction is given.

30 “(2) Either House of the Parliament, within 15 sitting days of that House after a copy of a direction has been laid before that House under sub-section (1), may, in pursuance of a motion upon notice, pass a resolution disallowing the direction.

“(3) Where—

(a) a notice referred to in sub-section (2) is given with respect to a direction; and

35 (b) at the expiration of the period during which a resolution disallowing the direction could have been passed—

(i) the notice has not been withdrawn and the relevant motion has not been called on; or

(ii) the relevant motion has been called on, moved and seconded and has not been withdrawn or otherwise disposed of,

40 the direction shall be deemed to have been disallowed.

“(4) If—

- (a) neither House of the Parliament passes a resolution in accordance with sub-section (2) disallowing a direction; and
- (b) the direction has not been deemed to have been disallowed under sub-section (3),

the direction takes effect on the day immediately following the last day upon which a resolution disallowing the direction could have been passed.

“(5) If, before the expiration of 15 sitting days of a House of the Parliament after a copy of a direction has been laid before that House—

- (a) the House of Representatives is dissolved or expires, or the Parliament is prorogued; and
- (b) at the time of the dissolution, expiry or prorogation, as the case may be—
 - (i) a notice of motion disallowing the direction has not been withdrawn and the motion has not been called on; or
 - (ii) a motion disallowing the direction has been called on, moved and seconded and has not been withdrawn or otherwise disposed of,

the copy of the direction shall, for the purposes of this section, be deemed to have been laid before that first-mentioned House on the first sitting day of that first-mentioned House after the dissolution, expiry or prorogation, as the case may be.”.

Refusal to admit person as contributor on ground of health

20. Section 73BF of the Principal Act is amended by inserting after sub-section (4) the following sub-section:

“(4A) Where the Minister makes a decision under sub-section (4) refusing to give a direction with respect to the admission of a person, he shall cause to be served, either personally or by post, on the person, notice in writing of that decision.”.

Refusal of contributions of patient in institution

21. Section 73BFA of the Principal Act is amended by inserting after sub-section (4) the following sub-section:

“(4A) Where the Minister makes a decision under sub-section (4) refusing to give a direction with respect to the acceptance of payment of the contributions of a person, he shall cause to be served, either personally or by post, on the person, notice in writing of that decision.”.

Direction to reinstate person as contributor to a registered organization

22. Section 73BFB of the Principal Act is amended by inserting after sub-section (4) the following sub-section:

“(4A) Where the Minister makes a decision under sub-section (4) refusing to give a direction with respect to the reinstatement of a person, he shall cause

to be served, either personally or by post, on the person, notice in writing of that decision.”.

23. After section 81A of the Principal Act the following section is inserted:

Registered organizations not subject to certain taxes

5 “81B. (1) A registered organization is not subject to taxation under a law of a State or Territory, being taxation—

- (a) that, under that law, is imposed in respect of any or all of the matters that are prescribed matters in relation to the organization; or
- 10 (b) the rate or amount of which is, under that law, calculated wholly or partly by reference to any or all of the matters that are prescribed matters in relation to the organization.

“(2) In determining whether this Act (other than this section) excludes or limits the operation of a law of a State or Territory, sub-section (1) shall be disregarded.

15 “(3) In sub-section (1), ‘prescribed matter’, in relation to a registered organization, means—

- (a) the number of contributors, or the number of contributors included in a particular class of contributors, to any or all of the funds conducted by the organization;
- 20 (b) amounts paid or payable by any such contributors;
- (c) benefits paid or payable to any such contributors; and
- (d) any other matter connected with the business of carrying on registered organizations that is declared by the regulations to be a prescribed matter in relation to registered organizations.

25 “(4) Nothing in paragraphs (3) (a), (b) or (c) shall be taken, by implication, to limit the generality of the matters that may be declared for the purposes of paragraph (3) (d).”.

Offences

30 24. Section 82 of the Principal Act is amended by omitting from paragraph (1) (b) “particular” and substituting “material particular”.

Interpretation

25. (1) Section 84 of the Principal Act is amended—

- (a) by inserting after the definition of “child” in sub-section (1) the following definitions:

35 “‘communicated’, in relation to a prescription, means communicated directly or indirectly;

“‘concessional beneficiary’ means—

- (a) a person to whom or in respect of whom—

- (i) there is being paid an age pension, an invalid pension, a widow’s pension, a supporting parent’s benefit or a sheltered employment

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allowance under the *Social Security Act 1947*;
or

(ii) such a pension, benefit or allowance would be payable if the person were not a person in receipt of a training allowance under section 135D of the *Social Security Act 1947*; 5

(b) a person to whom or in respect of whom there is being paid a service pension under the *Repatriation Act 1920*;
or

(c) a person, not being a person to whom paragraph (a) or (b) applies, who is a disadvantaged person within the meaning of the *Health Insurance Act 1973*, 10

but does not include a pensioner;

“ ‘concessional benefit prescription’ means a prescription that, in accordance with section 84AA, is a prescription in respect of a concessional beneficiary or of a dependant of a concessional beneficiary; 15

“ ‘dependant’ means—

(a) in relation to a person, being a concessional beneficiary, to whom paragraph (a) or (b) of the definition of ‘concessional beneficiary’ applies— 20

(i) the wife of the person;

(ii) a child under the age of 16 years who is in the custody, care and control of the person or of the wife or husband of the person; or 25

(iii) a person who—

(A) has attained the age of 16 years but is under the age of 25 years;

(B) is receiving full-time education at a school, college or university; 30

(C) is not in receipt of an invalid pension under Part III of the *Social Security Act 1947*; and

(D) is wholly or substantially dependent on the person or on the wife or husband of the person; and 35

(b) in relation to a person to whom paragraph (c) of that definition applies, being a disadvantaged person within the meaning of the *Health Insurance Act 1973*—a person who is, within the meaning of that Act, a dependant of that person;” 40

- (b) by inserting after the definition of “friendly society body” in sub-section (1) the following definition:

“‘general benefit prescription’ means a prescription other than a concessional benefit prescription or a pensioner benefit prescription;”;

- (c) by omitting from sub-section (1) the definition of “pensioner” and substituting the following definition:

“‘pensioner benefit prescription’ means a prescription that, in accordance with section 84AA, is a prescription in respect of a pensioner or of a dependant of a pensioner;”;

- (d) by omitting from sub-section (1) the definition of “prescribed maximum amount”; and

- (e) by adding at the end thereof the following sub-sections:

“(5) In the definition of ‘dependant’ in sub-section (1), a reference to the wife or husband of a person who is a concessional beneficiary to whom paragraph (a) or (b) of the definition of ‘concessional beneficiary’ in that sub-section applies is a reference to the person, whether legally married to the concessional beneficiary or not, whose income is to be taken into account for the purpose of determining the rate at which pension is payable to or in respect of the concessional beneficiary, or the rate at which pension would be payable to or in respect of the concessional beneficiary if the concessional beneficiary were not a person in receipt of a training allowance under section 135D of the *Social Security Act 1947*, as the case may be.

“(6) In sub-section (5), ‘pension’ means—

(a) an age pension, an invalid pension or a sheltered employment allowance under the *Social Security Act 1947*; or

(b) a service pension under the *Repatriation Act 1920*.”.

- (2) Section 84 of the Principal Act is amended—

- (a) by omitting paragraph (a) of the definition of “concessional beneficiary” in sub-section (1) and substituting the following paragraph:

“(a) a person to whom or in respect of whom there is being paid an age pension, an invalid pension, a widow’s pension, a supporting parent’s benefit, a sheltered employment allowance or a rehabilitation allowance under the *Social Security Act 1947*;”;

- (b) by omitting sub-sub-paragraph (a) (iii) (C) of the definition of “dependant” in sub-section (1) and substituting the following sub-sub-paragraph:

“(C) is not being paid an invalid pension under Part III of the *Social Security Act 1947* or, in a case where the person is being paid a rehabilitation allowance under that Act, was not

eligible to receive such a pension immediately before the person became eligible to receive that allowance; and”;

- (c) by omitting from sub-section (5) all the words after “concessional beneficiary” (fourth occurring); and
- (d) by omitting from paragraph (6) (a) “or a sheltered employment allowance” and substituting “, a sheltered employment allowance or a rehabilitation allowance”.

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26. After section 84 of the Principal Act the following section is inserted:

Concessional benefit prescriptions and pensioner benefit prescriptions

“84AA. (1) A written prescription shall not be taken, for the purposes of this Part, to be a prescription in respect of a concessional beneficiary unless there appears on the reverse side of the prescription, a declaration made by, or purporting to be made by—

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- (a) the patient; or
- (b) a person who has attained the age of 12 years and who is authorized by the patient to act on his behalf,

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in accordance with the prescribed form, that, to the best of his knowledge and belief, the patient is a concessional beneficiary.

“(2) A written prescription shall not be taken, for the purposes of this Part, to be a prescription in respect of a dependant of a concessional beneficiary, unless there appears on the reverse side of the prescription, a declaration made by, or purporting to be made by—

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- (a) if the patient has not attained the age of 12 years—the concessional beneficiary, or a person who has attained the age of 12 years and who is authorized by the concessional beneficiary to act on his behalf; or
- (b) if the patient has attained the age of 12 years—the patient, the concessional beneficiary, or a person who has attained the age of 12 years and who is authorized by the patient or the concessional beneficiary to act on his behalf,

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in accordance with the prescribed form, that, to the best of his knowledge and belief, the patient is a dependant of a concessional beneficiary.

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“(3) A written prescription shall not be taken, for the purposes of this Part, to be a prescription in respect of a pensioner unless there appears on the reverse side of the prescription, a declaration made by, or purporting to be made by—

- (a) the patient; or
- (b) a person who has attained the age of 12 years and who is authorized by the patient to act on his behalf,

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in accordance with the prescribed form, that, to the best of his knowledge and belief, the patient is a pensioner.

“(4) A written prescription shall not be taken, for the purposes of this Part, to be a prescription in respect of a dependant of a pensioner, unless there

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appears on the reverse side of the prescription, a declaration made by, or purporting to be made by—

5 (a) if the patient has not attained the age of 12 years—the pensioner, or a person who has attained the age of 12 years and who is authorized by the pensioner to act on his behalf; or

(b) if the patient has attained the age of 12 years—the patient, the pensioner, or a person who has attained the age of 12 years and who is authorized by the patient or the pensioner to act on his behalf,

10 in accordance with the prescribed form, that, to the best of his knowledge and belief, the patient is a dependant of a pensioner.

“(5) A prescribed form may require a declaration made with respect to a person to be made specifying such particulars in relation to the status of the person as a concessional beneficiary, pensioner, or dependant of a concessional beneficiary or pensioner, as are specified in the form.

15 “(6) Where—

(a) a prescription is communicated to an approved pharmaceutical chemist in pursuance of paragraph 89 (a); and

20 (b) immediately before the supply of a pharmaceutical benefit upon that prescription, a declaration made, or purporting to be made, either orally or in writing, by—

(i) if the patient has not attained the age of 12 years—the person, being a concessional beneficiary or a pensioner, with respect to whom the patient is a dependant; or

25 (ii) if the patient has attained the age of 12 years—the patient, or, if the patient is a dependant of another person, being a concessional beneficiary or a pensioner—that other person,

that the patient is—

(iii) a concessional beneficiary or dependant of a concessional beneficiary; or

30 (iv) a pensioner or a dependant of a pensioner,

and specifying such particulars in relation to the status of the patient as would have been required to have been declared if that declaration had been made in accordance with the prescribed form is communicated to the chemist,

35 the prescription shall be taken, for the purposes of this Part, to be a prescription in respect of—

(c) a concessional beneficiary or a dependant of a concessional beneficiary; or

(d) a pensioner or a dependant of a pensioner,

40 as the case requires.

“(7) The Minister may, by instrument in writing, set out a form to be the prescribed form for the purposes of this section.

“(8) A copy of an instrument made under sub-section (7) shall be published in the *Gazette*.

“(9) In this section—

‘patient’, in relation to a prescription, means the person receiving medical or dental treatment with respect to whom the prescription is written or made; 5

‘prescribed form’ means the form set out in an instrument in force under sub-section (7);

‘written prescription’ means a prescription written by a medical practitioner or a participating dental practitioner in accordance with this Act and the regulations.”. 10

Limited charges for pharmaceutical benefits

27. Section 87 of the Principal Act is amended—

(a) by omitting sub-sections (2) and (3) and substituting the following sub-sections: 15

“(2) An approved pharmaceutical chemist or an approved medical practitioner acting in accordance with his approval may, in respect of each supply by him of a pharmaceutical benefit (including each repeated supply)—

(a) upon a concessional benefit prescription—charge the person to whom the pharmaceutical benefit is supplied \$2.00; or 20

(b) upon a general benefit prescription—charge the person to whom the pharmaceutical benefit is supplied \$4.00.

“(3) Where an approved pharmaceutical chemist or an approved medical practitioner supplies a pharmaceutical benefit in accordance with a direction included in a prescription in pursuance of sub-section (6) of section 88, the amount chargeable in accordance with sub-section (2) of this section is, in lieu of whichever of the amounts referred to in sub-section (2) of this section is applicable, an amount equal to the product of that applicable amount and the minimum number of occasions of supply that would have had to be directed if the medical practitioner had prescribed the same total quantity or number of units of the pharmaceutical benefit by way of repeated supplies.”; 25
and 30

(b) by omitting from sub-section (5) “pensioner” and substituting “pensioner or a dependant of a pensioner”. 35

Approved pharmaceutical chemists

28. Section 90 of the Principal Act is amended by adding at the end thereof the following sub-section:

“(5) Where the Permanent Head makes a decision granting or rejecting an application made by a pharmaceutical chemist under this section, he shall cause to be served, either personally or by post, on the pharmaceutical chemist, notice in writing of that decision.”. 40

Approved medical practitioners

29. Section 92 of the Principal Act is amended by inserting after sub-section (1) the following sub-section:

5 “(1A) Where the Permanent Head makes a decision under sub-section (1) approving or refusing to approve a medical practitioner, he shall cause to be served, either personally or by post, on the medical practitioner, notice in writing of that decision.”

Approvals to be subject to conditions

10 30. (1) Section 92A of the Principal Act is amended by omitting from sub-section (3) “sections 95 and 97” and substituting “section 95”.

(2) Section 92A of the Principal Act is further amended—

- 15 (a) by omitting from paragraph (1) (a) “that is less than the maximum” and substituting “other than the”;
- (b) by omitting from paragraph (1) (c) “that is less than the maximum” and substituting “other than the”;
- (c) by inserting after paragraph (1) (c) the following paragraph:

“(ca) a condition that where—

- 20 (i) the approved pharmaceutical chemist supplies a pharmaceutical benefit upon a prescription that, in accordance with sub-section 84AA (6), is a concessional benefit prescription or a pensioner benefit prescription; and
- (ii) that prescription is subsequently reduced to a document in writing (in this paragraph referred to as the ‘relevant document’) and given to the chemist in pursuance of regulations in force for the purposes of this Part,

30 the chemist shall make a declaration on the reverse side of the relevant document in such a manner as would, if the relevant document were a written prescription, cause that prescription to be, in accordance with sub-section 84AA (1) or (2), a concessional benefit prescription, or, in accordance with sub-section 84AA (3) or (4), a pensioner benefit prescription, as the case requires;”;

- 35 (d) by omitting from paragraph (2) (a) “prescriptions that are marked, in accordance with the regulations, as prescriptions in respect of pensioners” and substituting “pensioner benefit prescriptions”; and
- (e) by adding at the end thereof the following sub-section:

40 “(4) For all purposes in connection with the making by an approved pharmaceutical chemist of a declaration of the kind referred to in paragraph (1) (ca)—

- (a) the chemist shall be taken, for the purposes of sub-section 84AA (1), (2), (3) or (4) in its application for the purposes of

that paragraph, to have been authorized by the person by whom the declaration referred to in sub-section 84AA (6) is, or is purportedly, made to act on behalf of that person; and

- (b) the communication of the declaration referred to in sub-section 84AA (6) shall be taken to afford full and sufficient grounds for the making of the first-mentioned declaration.”. 5

Approved hospital authorities

31. Section 94 of the Principal Act is amended by inserting after sub-section (4) the following sub-section:

“(4A) Where the Minister makes a decision granting or rejecting an application made by a hospital authority under this section, he shall cause to be served, either personally or by post, on the hospital authority, notice in writing of that decision.”. 10

Payment for supply of benefits

32. Section 99 of the Principal Act is amended— 15

- (a) by omitting from paragraph (2) (a) “marked, in accordance with the regulations, as a prescription in respect of a pensioner” and substituting “a pensioner benefit prescription”;
- (b) by omitting from paragraph (2) (b) “maximum”;
- (c) by omitting from sub-section (2A) “otherwise than upon a prescription marked, in accordance with the regulations, as a prescription in respect of a pensioner” and substituting “upon a pensioner benefit prescription”; 20
- (d) by omitting from sub-section (2A) “was supplied” (wherever occurring) and substituting “is supplied”; 25
- (e) by omitting from sub-section (2A) “the prescribed maximum amount” (wherever occurring) and substituting “\$4.00”; and
- (f) by inserting after sub-section (2A) the following sub-section:
- “(2B) Where a pharmaceutical benefit is supplied upon a concessional benefit prescription and— 30
- (a) the pharmaceutical benefit is supplied by an approved pharmaceutical chemist or an approved medical practitioner otherwise than as referred to in paragraph (c) and the Commonwealth price of the pharmaceutical benefit does not, at the time of the supply, exceed \$2.00; 35
- (b) the pharmaceutical benefit is supplied by an approved hospital authority and the amount that would have been the Commonwealth price of the pharmaceutical benefit if it had been supplied by an approved pharmaceutical chemist does not, at the time of the supply, exceed \$2.00; or 40
- (c) the pharmaceutical benefit is supplied by an approved pharmaceutical chemist or an approved medical practitioner in accordance with a direction included in a prescription in

pursuance of sub-section (6) of section 88 and the Commonwealth price of the maximum quantity or number of units of the pharmaceutical benefit that could, but for that sub-section, have been directed to be supplied on any one occasion does not, at the time of the supply, exceed \$2.00,

the supply and receipt of that pharmaceutical benefit shall, for all purposes of this Part, be deemed to be a supply and receipt otherwise than under this Part.”.

Offences

33. (1) Section 103 of the Principal Act is amended by omitting from paragraph (5) (a) “particular” and substituting “material particular”.

(2) Section 103 of the Principal Act is amended—

(a) by inserting after sub-section (4) the following sub-section:

“(4A) A person shall not, in a declaration of a kind referred to in section 84AA, make a statement that is, to his knowledge, false or misleading in a material particular.”; and

(b) by omitting the penalty set out at the foot thereof and substituting the following penalty:

“Penalty: \$1,000 or imprisonment for 6 months, or both.”.

Pharmaceutical chemists to furnish statement of stocks

34. Section 104A of the Principal Act is amended by adding at the end of paragraph (2) (b) “in a material particular”.

35. Section 105AA of the Principal Act is repealed and the following section is substituted:

Interpretation

“105AA. In this Part—

‘decision’ has the same meaning as in the *Administrative Appeals Tribunal Act 1975*;

‘Tribunal’ means the Administrative Appeals Tribunal.”.

Applications for review by Tribunal

36. (1) Section 105AB of the Principal Act is amended—

(a) by inserting after sub-section (4) the following sub-section:

“(4AAA) An application may be made to the Tribunal for review of a decision of the Minister under sub-section 73BF (4) or 73BFA (4).”; and

(b) by inserting after sub-section (7) the following sub-sections:

“(7A) An application may be made to the Tribunal for review of a decision of the Permanent Head under section 92.

“(7B) An application may be made to the Tribunal for review of a decision of the Minister under section 94.”.

(2) Section 105AB of the Principal Act is amended by omitting from sub-section (4AA) all the words after “under” and substituting “sub-section 73BFB (4)”.

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(3) The amendments made by sub-section (1) do not apply in relation to a decision made before the commencement of this section.

(4) The amendment made by sub-section (2) does not apply in relation to a decision of the Minister under sub-section 73BFB (4) of the Principal Act refusing to give a direction, being a decision made before the commencement of this section.

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37. After section 105AB of the Principal Act the following section is inserted in Part VIIA:

Statement to accompany notification of decisions

“105AC. (1) Where the Minister, a delegate of the Minister, the Permanent Head or a delegate of the Permanent Head makes a decision of the kind referred to in section 105AAA or 105AB and gives, or causes to be given, to the person or persons whose interests are affected by the decision notification in writing of the decision, that notice shall include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal for review of the decision to which the notice relates by or on behalf of the person or persons whose interests are affected by the decision.

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“(2) Any failure to comply with the requirements of sub-section (1) in relation to a decision does not affect the validity of the decision.”.

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Defence in certain prosecutions

38. Section 134C of the Principal Act is amended by omitting “particular” and substituting “material particular”.

Evidence

39. Section 139A of the Principal Act is amended—

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(a) by omitting paragraphs (1)(g) and (h) and substituting the following word and paragraph:

“and (g) a hospital authority was or was not approved under section 94 for the purpose of its supplying pharmaceutical benefits to patients receiving treatment in or at a hospital specified in the certificate.”; and

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(b) by inserting after sub-section (1) the following sub-section:

“(1A) The Permanent Head may, by writing under his hand, certify—

(a) that a document annexed to the certificate is a true copy of a determination by the Minister under this Act or of any other document made or issued under this Act; or

(b) that—

(i) a document annexed to the certificate is a true copy of a determination by the Minister under this Act or of any other document made or issued under this Act; and

(ii) the determination or other document of which the annexed document is certified to be a true copy had effect during a period or on a date specified in the certificate.”.

Amendments consequential upon the enactment of the *Social Services Legislation Amendment Act 1982*

40. The Principal Act is amended as set out in Schedule 2.

Application of certain amendments

41. (1) The amendments made by sub-section 25 (1), sections 26 and 27, sub-section 30 (2) and section 32 apply in relation to the supply of a pharmaceutical benefit on or after 1 January 1983.

(2) A prescription marked, before 1 January 1983, in accordance with regulations in force for the purposes of Part VII of the Principal Act, as a prescription in respect of a pensioner shall be deemed, for the purposes of the Principal Act as amended by this Act, to be a pensioner benefit prescription.

PART IV—AMENDMENT OF THE HEALTH INSURANCE COMMISSION ACT 1973

Principal Act

42. The *Health Insurance Commission Act 1973*³ is in this Part referred to as the Principal Act.

Liability of Commission to pay rates, taxes and charges

43. Section 39 of the Principal Act is amended by omitting sub-section (1) and substituting the following sub-section:

“(1) Subject to the *National Health Act 1953* in its application to and in relation to the Commission by virtue of sub-section 8B (2) of this Act, the Commission shall pay all rates, taxes and charges under any law of the Commonwealth, a State or a Territory.”.

SCHEDULE 1

Section 12

AMENDMENTS OF THE HEALTH INSURANCE ACT 1973 CONSEQUENTIAL UPON THE ENACTMENT OF THE SOCIAL SERVICES LEGISLATION AMENDMENT ACT 1982

1. The following provisions of the Principal Act are amended by omitting "*Social Services Act 1947*" (wherever occurring) and substituting "*Social Security Act 1947*":
Sub-sections 3 (1), (9) and (10), 5B (12) and sections 5D, 5E, 5F, 130G and 130H.
2. The following provisions of the Principal Act are amended by omitting "Director-General of Social Services" (wherever occurring) and substituting "Director-General of Social Security":
Sections 5, 5A, 5B, 5C, 5D, 5E, 5F, 130, 130A, 130B, 130F and 130H.

SCHEDULE 2

Section 40

AMENDMENTS OF THE NATIONAL HEALTH ACT 1953 CONSEQUENTIAL UPON THE ENACTMENT OF THE SOCIAL SERVICES LEGISLATION AMENDMENT ACT 1982

- The following provisions of the Principal Act are amended by omitting "*Social Services Act 1947*" (wherever occurring) and substituting "*Social Security Act 1947*":
Sub-sections 4 (1), (2) and (3).

NOTES

1. No. 42, 1974, as amended. For previous amendments, see No. 58, 1975; Nos. 59, 91, 101 and 109, 1976; No. 75, 1977; Nos. 89 and 133, 1978; Nos. 53 and 123, 1979; No. 132, 1980; Nos. 118 and 176, 1981; and No. 49, 1982.
2. No. 95, 1953, as amended. For previous amendments, see No. 68, 1955; Nos. 55 and 95, 1956; No. 92, 1957; No. 68, 1958; No. 72, 1959; No. 16, 1961; No. 82, 1962; No. 77, 1963; No. 37, 1964; Nos. 100 and 146, 1965; No. 44, 1966; Nos. 14 and 100, 1967; No. 100, 1968; No. 102, 1969; No. 41, 1970; No. 85, 1971; No. 114, 1972; Nos. 49 and 202, 1973; No. 37, 1974; Nos. 1, 13 and 93, 1975; Nos. 1, 60, 91, 99, 108, 157 and 177, 1976; Nos. 98 and 100, 1977; Nos. 36, 88, 132 and 189, 1978; Nos. 54, 91 and 122, 1979; Nos. 117 and 131, 1980; Nos. 40, 74, 118 and 176, 1981; and No. 49, 1982.
3. No. 41, 1974, as amended. For previous amendments, see Nos. 61, 91 and 100, 1976; Nos. 36 and 134, 1978; and No. 53, 1979.